

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Sheldahl, Inc.,

Chapter 11

Debtor.

Case No.: 02-31674

RESPONSE OF BRENNTAG GREAT LAKES, LLC TO
STEERING COMMITTEE'S SECOND OMNIBUS OBJECTION TO CLAIMS

TO: THOSE PARTIES SPECIFIED IN LOCAL RULE 9013-3(b).

COMES NOW Brenntag Great Lakes, LLC ("Brenntag"), by and through its undersigned counsel, and files this Response to the Steering Committee's Second Omnibus Objection to Claims.

BACKGROUND

Brenntag timely filed a proof of claim (Claim No. 449) for \$49,390.03. A true and correct copy of that proof of claim is attached hereto and marked as **Exhibit A**, along with the attachments thereto.

The Steering Committee's Second Omnibus Objection to Claims objects to Brenntag's claim as being filed "in an amount that exceed[s] the amount indicated for the corresponding creditor on the Schedules." The Steering Committee further seeks disallowance of Brenntag's claim pursuant to 11 U.S.C. §502(d) "unless [Brenntag] repays the preferential transfers it received." Subsequent to filing its claim objection, the Steering Committee commenced an adversary proceeding against Brenntag, seeking avoidance of \$90,273.99 in allegedly preferential transfers from Brenntag, under 11 U.S.C. §547, recovery of the allegedly preferential transfer under 11 U.S.C. §550, and disallowance of Brenntag's claim pursuant to 11 U.S.C. §502(d). (Adv. Pro. No.: 04-3387).

Brenntag has requested that counsel for the Steering Committee consolidate its claim objection in the adversary proceeding, in the interest of both efficiency and judicial economy. The Steering Committee has refused. *See*, **Exhibit B** attached hereto. Therefore, Brenntag files this response to the Steering Committee's objection, and requests that this court order c the objection be consolidated with the adversary proceeding so that they can be tried together within the context of the adversary proceeding the Steering Committee has commenced against Brenntag.

ARGUMENT

A timely filed proof of claim is prima facie evidence of the validity and the amount of a creditor's claim. *See In re Fullmer*, 962 F.2d 1463 (10th Cir. 1992). The 8th Circuit Court of Appeals has stated that “[u]nder 11 U.S.C. § 502 (1988), a proof of claim filed in a bankruptcy proceeding is deemed allowed unless a party in interest objects.” *In re Gran* 964 F.2d 822, 827 (8th Cir. 1992). If a party has filed a proof of claim , a party objecting to such a claim “must then produce evidence rebutting the claimant or the claimant will prevail...” *Id.* In this case, the Steering Committee has not met its burden of rebutting the validity of Brenntag's claim.

Brenntag's claim filed in the amount of \$49,390.03 is valid and should be allowed in the amount stated. Attached to Brenntag's claim is supporting documentation which outlines the write-offs that Brenntag took on the Sheldahl account. Specifically, \$49,390.03 worth of product was shipped on or before April 29, 2002, for which Sheldahl paid with NSF checks. The Steering Committee presents no evidence refuting this fact. The Steering Committee's Second Omnibus Objection provides no detailed calculation or documentation setting forth the amounts it seeks to reduce Brenntag's claim by. Moreover, it does not address the documentation attached to Brenntag's claim, nor does it establish any basis for a reduction of that claim amount.

As such, the Steering Committee's objection must be overruled and Brenntag's claim must be allowed. Moreover, in light of the forgoing, it would appear that the entire basis of the Steering Committee's objection to Brenntag's claim is based upon the adversary proceeding now commenced to avoid allegedly preferential transfers. Brenntag is confident that it can defeat the Steering Committee's claims. First, more than half of the transfers the Steering Committee seeks to recover in its preference action can be offset by the nearly \$50,000 in "new value" advanced by Brenntag, as set forth in Brenntag's claim. See 11 U.S.C. §547(c)(4). Obviously, this will be plead as an affirmative defense by Brenntag in the adversary proceeding, and the sufficiency of the evidence will be put directly at issue. Second, evidence presented to the Steering Committee within the context of the adversary proceeding will establish that all or nearly all of the transfers sought to be avoided by the Steering Committee were in fact made within the ordinary course of business between Brenntag and Sheldahl. *See, In re Spirit Holding Co., Inc.*, 153 F.3d 902, 904 (8th Cir. 1998). Third, the Steering Committee has stated that the transfers at issue are preferential. However, its inability to prove that point in the context of this claim objection is underscored by the fact that Brenntag commenced an adversary proceeding on the very same issue.

The Steering Committee has failed to meet its burden with respect to its claim objection. As such, its claim objection should be overruled. Moreover, because the basis of the Steering Committee's claim objection will be directly at issue in the adversary proceeding now commenced, the most logical and efficient use of resources for all involved, including this Court, is for these matters to be consolidated in the adversary proceeding, and for the Steering Committee's claim objection to be withdrawn. Since the Steering Committee has refused to do

so, Brenntag requests that the claim objection be overruled and Brenntag's claim allowed in its entirety.

WHEREFORE, Brenntag respectfully requests that the Steering Committee's claim objection be denied, and that this Court order consolidation of this claim objection within the context of the adversary proceeding now pending.

RIDER BENNETT, LLP

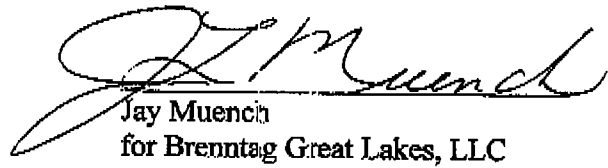
By /e/ Raphael T. Wallander
Raphael T. Wallander (MN ID No.: 297628)
Attorney for Brenntag Great Lakes, LLC
333 South Seventh Street
Suite 2000
Minneapolis, MN 55402
(612) 335-3882

Dated: October 8, 2004

VERIFICATION

I, Jay Muench, Director, Finance and Administration, for Brenntag Great Lakes, LLC, declare under penalty of perjury that the foregoing Response of Brenntag Great Lakes, LLC to Steering Committee's Second Omnibus Objection to Claims, is true and correct according to the best of my knowledge, information and belief.

Dated: 10-8, 2004



Jay Muench
for Brenntag Great Lakes, LLC

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA (ST. PAUL)**

Name of Debtor
SHELDahl INC

Case Number
02-31674

Name of Creditor (The person or other entity to whom the debtor owes money or property):
BRENNTAG GREAT LAKES LLC
Name and Address where notices should be sent:

BRENNTAG GREAT LAKES LLC
LOCK BOX 790282
ST LOUIS MO 63179-0282

BRENNTAG GREAT LAKES, LLC
P.O. Box 444
WI 53007-0444

Telephone Number: 262-252-6463

Account or other number by which creditor identifies debtor:
50766

- ☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
- ☐ Check box if you have never received any notices from the bankruptcy court in this case.
- ☒ Check box if the address differs from the address on the envelope sent to you by the court.

Check here if ☐ replaces this claim ☐ amends a previously filed claim, dated _____

1. Basis for Claim

- ☒ Goods sold
- ☐ Services performed
- ☐ Money loaned
- ☐ Personal injury/wrongful death
- ☐ Taxes
- ☐ Other _____

- ☐ Retiree benefits as defined in 11 U.S.C. §1114(a)
- ☐ Wages, salaries, and compensation (fill out below)
- Your SS #: _____
- Unpaid compensation for services performed from _____ to _____ (date) (date)

2. Date debt was incurred:
12/03/01

3. If court judgment, date obtained:
4. Total Amount of Claim at Time Case Filed:

\$ 49,390.03

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

5. Secured Claim.
☐ Check this box if your claim is secured by collateral (including a right of setoff).

Brief Description of Collateral:

- ☐ Real Estate ☐ Motor Vehicle
- ☐ Other: _____

Value of Collateral: \$ _____

Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____

6. Unsecured Priority Claim.
☐ Check this box if you have an unsecured priority claim

Amount entitled to priority \$ _____

Specify the priority of the claim:

- ☐ Wages, salaries, or commissions (up to \$4,650)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3).
- ☐ Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4).
- ☐ Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6).
- ☐ Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7).
- ☐ Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).
- ☐ Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____).

*Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.

9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

SEND CLAIM TO:
U.S. BANKRUPTCY COURT
200 U.S. COURTHOUSE
316 NORTH ROBERT STREET
ST. PAUL, MN 55101

Date

8.7.02

Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):

Shirley D. Perkins - Credit Coordinator

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

BRENTAG GREAT LAKES, LLC
P.O. Box 444
WI 53007-0444

SHELD AHL BAD DEBT WRITEOFF
6/24/02

FILED CH 11 ON 4/30/02, INCLUDES BAD CHECK RECEIVED 4/29/02

IN	328482	130.08	12/03/01	203	410512	130.08	130.08	
IN	328505	830.00	12/03/01	203	421404	830.00	960.08	
IN	328506	150.00	12/03/01	203	421402	150.00	1,110.08	
IN	329408	1,293.93	12/10/01	196	423647	1,293.93	2,404.01	
IN	329430	1,660.00	12/10/01	196	421404	1,660.00	4,064.01	
IN	329431	270.00	12/10/01	196	421402	270.00	4,334.01	
IN	329432	1,016.06	12/10/01	196	421399	1,016.06	5,350.07	
IN	330771	8,866.00	12/17/01	189	421405	8,866.00	14,216.07	
IN	330772	996.00	12/17/01	189	421404	996.00	15,212.07	
IN	330773	300.00	12/17/01	189	421402	300.00	15,512.07	
IN	330774	508.03	12/17/01	189	421399	508.03	16,020.10	
IN	330775	1,293.93	12/17/01	189	423524	1,293.93	17,314.03	
IN	333565	8,866.00	01/07/02	168	421405	8,866.00	26,180.03	
IN	333567	830.00	01/07/02	168	421404	830.00	27,010.03	
IN	333568	150.00	01/07/02	168	421402	150.00	27,160.03	
IN	333832	1,524.10	01/07/02	168	421399	1,524.10	28,684.13	
CO	253817	(381.86)	04/08/02	77		(517.22)	0 28,302.27	(135.36)
CO	253866	(18.00)	04/08/02	77		(195.00)	0 28,284.27	
CO	253893	(555.56)	04/12/02	73		(3,046.14)	0 27,728.71	
IN	354297	17,732.00	04/29/02	56	421405	17,732.00	45,460.71	bad check
IN	354298	300.00	04/29/02	56	421402	300.00	45,760.71	bad check
IN	354299	130.08	04/29/02	56	421478	130.08	45,890.79	bad check
IN	354300	1,144.60	04/29/02	56	425107	1,144.60	47,035.39	bad check
IN	354301	2,490.00	04/29/02	56	421404	2,490.00	49,525.39	bad check
CM	92747	(49,329.64)	06/12/02	12			21,796.68	
		<u>195.75</u>					(135.36)	
		<u>60.39</u>					<u>49,390.03</u>	
CO	214845	(135.36)	05/23/02					

Daniel J. McGarry

From: Ethan Ganc [eganc@halperinlaw.net]
Sent: Tuesday, October 05, 2004 4:09 PM
To: Daniel J. McGarry
Subject: RE: Sheldahl v. Brenntag

Dan:

If we get to the point in our discussions that we have an agreement to settle both the preference action and the claim, then I will be happy to do so. At this time, however, I think your request is premature. To the extent that discussions are moving forward, I will agree to adjourn the hearing on the claims objection as well as your client's time to respond to the preference complaint.

Ethan D. Ganc, Esq.
Halperin Battaglia Raicht, LLP
555 Madison Avenue, 9th Floor
New York, New York 10022
Telephone (212) 765-9100, ext. 108
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-----Original Message-----

From: Daniel J. McGarry [mailto:DJMcGarry@riderlaw.com]
Sent: Tuesday, October 05, 2004 4:28 PM
To: Ethan Ganc
Cc: Ray T. Wallander
Subject: RE: Sheldahl v. Brenntag

Ethan,

As follow up to our discussion, please let me know if you would be willing to enter into a stipulated order, whereby Sheldahl's claim objection is handled solely within the context of the preference action. We can draft of the stipulation for your review. I would prefer to have something in the record memorializing the fact that we are handling both of these matters in the adversary proceeding.

Please let me know if this is acceptable, and I'll forward to you a stipulation.

Regards,

Rider Bennett, LLP
Daniel J. McGarry
333 South Seventh Street
Suite 2000
Minneapolis, MN 55402
612.340.7800 (phone)
612.340.7900 (fax)



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY No.: 02-31674

SHELD AHL, INC.,

Debtor.

UNSWORN CERTIFICATE OF SERVICE

I, Ruth A. Merrill, declare under penalty of perjury that on October 8, 2004, I sent copies, by facsimile and U.S. mail, of Response of Brenntag Great Lakes, LLC to Steering Committee's Second Omnibus Objection to Claims in the above-captioned case to the following:

Sheldahl, Inc. Steering Committee
c/o James E. Ruebenstein, Esq.
Moss & Barnett, P.A.
4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-4129
Fax: 612-339-6686

Faye Knowles
Fredrickson & Byron
900 Second Avenue South, Room 1100
Minneapolis, MN 55402
Fax: 612-492-7000

Ethan D. Ganc & Robert Raicht
Halperin Battaglia Raicht
555 Madison Avenue, 9th Floor
New York, NY 10022
Co-counsel to Steering Committee of Sheldahl, Inc.
Fax: 212-765-0964

Sarah J. Wencil, Esq.
United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
Fax: 612-664-5516

/e/ Ruth A. Merrill

Dated: October 8, 2004

Ruth A. Merrill